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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

LAURIE MARIE LASKEY, Plaintiff and Appellant, v. INTEL CORPORATION, Defendant and Respondent.	A123795 (Sonoma County Super. Ct. No. SCV-242073)

Laurie Marie Laskey filed a complaint in propria persona for personal injury and identity theft against Intel Corporation (Intel). Intel demurred to her complaint, and the lower court sustained the demurrer with leave to amend on the grounds that all of her claims were time-barred. Subsequently, Laskey filed a first amended complaint (FAC). The trial court found that Laskey's FAC did not cure the defect and sustained Intel's demurrer to the FAC without leave to amend and entered judgment of dismissal. Laskey appeals and we affirm the judgment.

BACKGROUND

On December 28, 2007, Laskey filed a complaint for personal injury and identity theft against Intel. She alleged causes of action for general negligence and product liability and asserted a claim for "computer crimes, identity theft, products liability, FCC violations, technical violations, code violations, split tunneling, etc." Under her general negligence cause of action, Laskey stated the following: "Evidence on my computer(s) indicate that the files associated with the hackers appear when the game disc is installed

onto the computer. [¶] The hackers are utilizing the faulty server system, this would also include the game servers. Since Intel Corporation designs the game they would be familiar with the system. [¶] Since the disc does not show a virus it must have something to do with the programming of the game. [¶] The game indicates platforms are being utilized. Possibly the hackers have created [their] own. [¶] Intel Corporation needs to be made aware that [their] product has the ability to cause identity theft, security breach and premise liability."

Laskey's product liability cause of action in her original complaint alleged that she was injured in 1996 by a product called "Cabela's Big Game Hunter." She alleged that Intel manufactured, designed, and sold the product.

On March 28, 2008, Intel filed a demurrer. Intel argued that Laskey's claims were time-barred. Intel also contended that the complaint was so fatally uncertain it could not reasonably respond to the allegations. Intel attached as an exhibit a copy of a notice of related cases, which listed 20 actions filed in Sonoma County Superior Court by Laskey against a variety of defendants. Each action was filed by Laskey in the court between December 20, 2007, and January 30, 2008.

The trial court on July 28, 2008, filed its order sustaining Intel's demurrer against Laskey's complaint with leave to amend.

On August 6, 2008, Laskey filed her FAC against Intel. She set forth claims for general negligence, products liability, and premises liability. She also included a claim for "mass tort, breach of contract, etc." She filed a seven-page attachment that appeared to respond to questions and issues from a document entitled "Handbook for Litigants Without a Lawyer." The FAC also included a one-page handwritten exhibit.

Intel filed a demurrer to Laskey's FAC on August 11, 2008. Intel argued that the statutes of limitations barred the action because the original complaint alleged the injury occurred in 1996 and the causes of action were so uncertain that "[i]t is impossible to determine what Laskey is claiming."

On November 14, 2008, the trial court sustained Intel's demurrer without leave to amend. The court ruled: "As plaintiff's amended complaint contains no factual

allegations as to any conduct or involvement with defendant related to plaintiff's claimed injuries, the demurrer is sustained, without leave to amend."

Laskey filed her notice of appeal on December 29, 2008. Judgment for Intel was entered on February 17, 2009.

DISCUSSION

I. *Jurisdiction*

Laskey appealed from the order sustaining the demurrer and not from the judgment of dismissal since no judgment had been entered at the time she filed her notice of appeal. "An order sustaining a demurrer without leave to amend is *not* an appealable order; only a judgment entered on such an order can be appealed." (*I.J. Weinrot & Son, Inc. v. Jackson* (1985) 40 Cal.3d 327, 331, superseded by statute on another issue.) "The existence of an appealable judgment is a jurisdictional prerequisite to an appeal." (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126.)

Ordinarily we would dismiss this appeal as being premature, but we have the discretion to deem the order sustaining the demurrer without leave to amend as incorporating the judgment of dismissal. (See, e.g., *Hinman v. Department of Personnel Admin.* (1985) 167 Cal.App.3d 516, 520, superseded by statute on another issue [court has discretion to consider on the merits an appeal from an order sustaining a demurrer without leave to amend].) To avoid delay we deem the order sustaining the demurrer as incorporating the judgment of dismissal and decide Laskey's appeal on its merits.

II. *Standard of Review*

The standard of review governing an appeal from the judgment after the trial court sustains a demurrer without leave to amend is well established. " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a

reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Additionally, we note that Laskey is in propria persona, but a party appearing in propria persona "is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys." (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) " '[T]he in propria persona litigant is held to the same restrictive rules of procedure as an attorney.' " (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125-1126; accord, *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

III. *Waiver*

Intel argues that Laskey's failure to comply with the rules of appellate procedure should be treated as a waiver of all issues she did not support with citations to the record or to any legal authority. We agree that Laskey's brief in this court violates the California Rules of Court, rule 8.204(a)(1) by not containing a statement of appealability, omitting a table of contents, failing to provide citations to the record, not including a statement of the action's procedural history, and not containing a summary of significant facts limited to matters in the record. Laskey also has failed to provide any pertinent legal argument and has not explained the relevance of the various federal statutes that she does cite. (See, e.g., *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [" 'This court is not required to discuss or consider points which are not argued or which are not supported by citation to authorities or the record' "].) Failure to articulate any pertinent legal argument may be deemed a waiver or abandonment of the appeal. (See, e.g., *In re Sade C.* (1996) 13 Cal.4th 952, 994.) Although we could dismiss Laskey's appeal for failing to set forth in her briefs in this court any pertinent legal argument or citations to the record, we will consider the appeal on its merits.

IV. *Statute of Limitations*

The trial court sustained Intel's demurrer without leave to amend against Laskey's FAC on the basis that the FAC contained "no factual allegations as to any conduct or involvement with defendant related to plaintiff's claimed injuries . . . ." Intel argues that an independent basis for affirming the lower court's order is that the statutes of limitations bar Laskey's claims. We agree that all of Laskey's claims are time-barred.[1] " '[W]e may affirm a trial court judgment on any basis presented by the record whether or not relied upon by the trial court.' " (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 999.)

Laskey's FAC sets forth claims for general negligence, products liability, premises liability, "mass tort," and breach of contract. She does not mention any date of injury, but in her original complaint she stated that she was injured in 1996.

Generally, after an amended pleading has been filed, courts will disregard the original pleading. (*Kenworthy v. Brown* (1967) 248 Cal.App.2d 298, 302.) However, an exception to this rule occurs where an amended complaint attempts to avoid defects set forth in a prior complaint by ignoring them. (*Ibid.*) In such a situation, the court may examine the prior complaint to ascertain whether the amended complaint is merely a sham; the court may read into the amended complaint the allegations of the superseded complaint. (*Ibid.*)

Laskey's original complaint alleged that she was injured in 1996 by the installation of "Cabela's Big Game Hunter" on her computer. We therefore take judicial notice of these facts. Additionally, Intel requested the lower court to take judicial notice of the pleadings of other lawsuits by Laskey and the trial court granted this request. Laskey filed a complaint against Cabela's Inc. and alleged that she suffered an injury from Cabela's Big Game Hunter in 1996. She also filed a complaint against Strong Incorporated, and alleged that she suffered an injury from Cabela's Big Game Hunter in

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[1] Intel also contends that the lower court's order should be affirmed on the basis that Laskey's pleading was fatally uncertain under Code of Civil Procedure section 430.10, subdivision (f).

1996. The appellate record contains the pleadings of the related cases and we take judicial notice of the facts alleged by Laskey in these other related cases. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 877-878.) The facts in these pleadings show that Laskey suffered her injury related to Cabela's Big Game Hunter in 1996.

Statutes of limitations begin to run when a cause of action accrues. (Code Civ. Proc., § 312 ["Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 (*Norgart*).) Generally speaking, a cause of action accrues at "the time when the cause of action is complete with all of its elements." (*Norgart, supra,* at p. 397.) Here, Laskey stated that she was injured in 1996.

Laskey's claims appear to be based on a personal injury and therefore the two-year statute of limitations under Code of Civil Procedure section 335.1 apply.[2] "[T]he nature of a cause of action does not depend on the label the plaintiff gives it or the relief the plaintiff seeks but on the primary right involved." (*Bird, Marella, Boxer & Wolpert v. Superior Court* (2003) 106 Cal.App.4th 419, 427, fn. omitted.) The statute of limitations for property damage is three years. (Code Civ. Proc., § 338, subds. (b) & (c).) To the extent Laskey is alleging or could allege a breach of contract claim, the four-year statute of limitations under Code of Civil Procedure section 337 applies. Additionally, any claim that is not for personal injury or property damage has a four-year statute of limitations under Code of Civil Procedure section 343.

Since all of Laskey's claims in her FAC accrued by the end of 1996, she had to file her complaint, at the latest, by the end of 2000 under the longest statute of limitations period of four years. Here, Laskey filed her original complaint on December 28, 2007, long after the statute of limitations had run.

There are, however, exceptions to the general rule that the claim accrues at the time of injury. One such exception, the discovery rule, postpones accrual of a cause of

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[2] Code of Civil Procedure section 335.1 provides that the time for commencing an action is within two years for an injury to "an individual caused by the wrongful act or neglect of another."

action until the plaintiff discovers, or has reason to discover, the cause of action. (*Norgart, supra,* 21 Cal.4th at p. 397.) A plaintiff has reason to discover a cause of action when he or she "has reason at least to suspect a factual basis for its elements." (*Id.* at p. 398.) Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period. (*Id.* at p. 398, fn. 3.)

Laskey needed to plead the following facts to show the application of the discovery rule: " ' "(1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence." [Citation.] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to "show diligence"; "conclusory allegations will not withstand demurrer." ' " (*Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 638.) Laskey asserted in her FAC that she was "part of an ongoing and or open investigation." In her seven-page attachment to her FAC she wrote: "The statute of limitations is different for every claim. The only way to find out the statute of limitations for a particular claim is to do research at a law library. I don't believe that there is another claim like mine. Claims exist based on the rule of discovery. I am still discovering. . . . I uncovered defendant within the statute of limitations." These statements meet neither of the requirements cited above and are insufficient to invoke the delayed discovery rule.

Further, in her brief in this court, Laskey does not provide any information about when she discovered the injury or any reason for failing to discover the injury earlier despite reasonable diligence. Rather, she simply states in her opening brief: "Plaintiff also suffers from delayed discovery realization. Defendant told plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts. Plaintiff was induced to further discovery. The doctrine of equitable tolling and estoppels applies." These conclusory statements are insufficient to show that the discovery rule applies.

Finally, in her opening brief in this court, Laskey makes a passing reference to the doctrines of equitable tolling and equitable estoppel. These doctrines also may toll the statute of limitations.

"[T]he three elements of equitable tolling are '(1) that defendant received timely notice in pursuing the first remedy, (2) there is a lack of prejudice to the Defendant in gathering evidence to defend against the second action, and (3) there is good faith and reasonable conduct by plaintiff in filing the second action.' " (*Thomas v. Gilliland* (2002) 95 Cal.App.4th 427, 434.) In her pleadings and in her briefs in this court, Laskey makes no allegation that she pursued an alternate remedy in good faith and therefore this doctrine does not apply.

" ' "Four elements must ordinarily be proved to establish an equitable estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and, (4) he must rely upon the conduct to his injury." ' " (*Spray, Gould & Bowers v. Associated Internat. Ins. Co.* (1999) 71 Cal.App.4th 1260, 1268.) Other than allege in her opening brief in this court that equitable estoppel applies, Laskey alleges no facts that satisfy any of the elements of equitable estoppel.

We conclude that all of Laskey's claims are time-barred as a matter of law and the lower court properly sustained Intel's demurrer against her FAC.

V. *Amending the Complaint*

The trial court gave Laskey an opportunity to amend her complaint and her FAC contained even less information than her original pleading. Her FAC is uncertain under Code of Civil Procedure section 430.10, subdivision (f). Additionally, she plead in her original complaint and in other pleadings against other defendants that her injury related to Cabela's Big Game Hunter occurred in 1996. Since her injury occurred in 1996, the statutes of limitations bar all of her claims and she cannot amend her pleading to state a cause of action.

In her brief in this court, Laskey seems to be arguing that she should be able to allege additional claims not set forth in her FAC. She mentions fraud and violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961(1); RICO) and the Computer Fraud Abuse Act (18 U.S.C. § 1030).[3] Even if she could set forth allegations to support these claims, they also are time-barred. A two-year statute of limitations applies to civil claims under the federal Computer Fraud Abuse Act. (18 U.S.C. § 1030(g).) The state fraud or mistake claims have a three-year statute of limitations. (Code Civ. Proc., § 338, subd. (d).) A civil federal RICO claim is subject to a four-year limitations period. (*Agency Holding Corp. v. Malley-Duff & Associates, Inc.* (1987) 483 U.S. 143, 156.) As already stressed, since Laskey knew of the facts constituting her claims by the end of 1996, even under the longest statute of limitations of four years, Laskey's claims expired by January 2001, years before she filed her complaint against Intel.

DISPOSITION

The judgment is affirmed. Intel is awarded costs.

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Lambden, J.

We concur:

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Kline, P.J.

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Richman, J.

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[3] She also asserts that Fidelity violated the "Patriot Act" and "U.S. Codes." It is not clear what exact statutes she is claiming Fidelity violated. With regard to any alleged violation of the Patriot Act, section 802 of the USA Patriot Act of 2001 added a new definition of "domestic terrorism" under title 18 of the United States Code section 2331(5). However, there is no case law or any basis for supporting the existence of a private cause of action for a plaintiff's claim of treason. (*Cooksey v. McElroy* (S.D. Ohio Sept. 24, 2008, No. 1:07CV581) 2008 WL 4367593, *23.)